

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. The petitioner graduated from high school in June 1999. During the fiscal year July 1, 1998 through June 30, 1999, WCMH provided the petitioner with respite services of \$10,000. In

addition, from April through August 1999, the petitioner received 20 hours a week of Medicaid personal care services. These services ended when the petitioner turned 21.

3. Funding for respite services is provided to qualifying families by WCMH with few strings attached. The family is free to use respite services for supervising a disabled family member when other family members are at work or running errands, or simply to take occasional time off for personal rest and recreation. The petitioner's mother has used respite services for all these purposes.

4. From September, 1998 into June, 1999, the petitioner attended school and was supervised on those days from 7:30 a.m. through 3 p.m., or 7 and a half hours a day. In the summers of 1998 and 1999 she attended a school program for four weeks (20 days) for six hours a day.

5. The petitioner's mother works as an aide in a nearby elementary school. Her hours are on school days from 7:30 a.m. to 3 p.m. During the 1998-99 school year her work hours coincided nearly exactly with the petitioner's school hours. Thus, the mother knew that the petitioner had proper supervision during her own work hours. As a result, she rarely, if ever, used respite money to purchase care for the petitioner during the day on school days.

6. The petitioner's mother provides care and supervision for the petitioner when the petitioner is at home. She described the petitioner as needing a high level of supervision; however, she has recently begun leaving the petitioner home by herself for up to one hour in the afternoons on weekdays before she gets home from work. There is no evidence that such short periods in the home pose an unacceptable risk to the petitioner's health and safety.

7. The petitioner's mother uses her respite services primarily to pay for other caregivers for the petitioner during parts of weekends and vacations. It is undisputed that this time is important for the mother to allow relief from the stress and demands of providing care for the petitioner on a full-time basis.

8. Since September 1999, WCMH has provided the petitioner with an employment services program of five hours per day each morning beginning at 7:30. These services are not tied to a school calendar and are provided 247 days a year. When it approved these services for FY00, WCMH also refunded to the petitioner respite moneys she had used during July and August, 1999 to purchase care while her application for employment services was pending.

9. Since October 1, 1999, the petitioner has also been receiving two hours a day of school-funded services that are provided on school days immediately after her time at the WCMH employment program. Because her mother's work day lasts longer than the petitioner's time in these two programs, this leaves the petitioner home unsupervised for less than one hour a day most weekdays (see supra).

10. When the petitioner graduated from high school in June, 1999, at the same time she applied to WCMH for funding of the employment services (see supra), her mother also applied for an increase of \$4992 for respite services (in addition to the \$10,000 a year she was already receiving) to cover the petitioner's alleged additional care needs.

11. WCMH has denied the petitioner's request for additional respite care on the basis that it is not a "system of care priority", and that the petitioner's existing care needs could be met if the petitioner's mother were to reprioritize the manner in which she obtains respite care.

ORDER

The decision denying the petitioner's request for additional respite care funding is affirmed.

REASONS

The Vermont Developmental Disabilities Act of 1996, at 18 V.S.A. § 8725(a), requires the Vermont Department of Developmental and Mental Health Services (DDMH) to adopt a System of Care Plan to regulate "the nature, extent, allocation and timing of services that will be provided to people with developmental disabilities and their families". The parties agree that the System of Care Plan that has been adopted by DDMH contains priorities for funding and service delivery that govern this appeal.

The Plan adopted by DDMH provides that services to persons with disabilities are provided and/or arranged by approved community mental health agencies, like WCMH. The statute specifies that appeals of decisions by the community mental health agencies are to be considered by the Human Services Board.¹ 18 V.S.A. § 8727(b).

In this case the petitioner argues that the denial of additional respite services by WCMH constitutes a reduction in existing services because of "new needs created by (her) graduation from school and loss of school-based and Medicaid personal care services resources". The petitioner maintains

¹ DDMH filed a notice of appearance in this matter stating that it supports the decision of WCMH.

that such a "reduction in existing services" is contrary to the criteria set forth in the state System of Care Plan. Inasmuch, however, as it is concluded that the evidence fails to establish a factual basis to the petitioner's claims, it is unnecessary for the Board to address the legal merits of the petitioner's arguments.

Based on the above findings it is concluded that when measured over the course of a full year there has not been an increase in the petitioner's need for respite services since her graduation from high school. For the period July 1, 1998 through June, 1999 (FY99) the evidence shows that the petitioner was in school 7 and a half hours a day for 180 days. It also appears that she attended a school summer program in 1998 for six hours a day for 20 days. This is a total of 1,470 hours in school for that twelve-month period during which the petitioner received care and supervision for which her mother did not have to use respite services.

The evidence also shows that from April through August 1999 the petitioner received 20 hours a week of Medicaid waiver services. Although the exact dates of this service are not in evidence, taking the evidence most favorable to the petitioner, it appears that she received three months of this service in

FY99 and two months in FY00. This would be a difference of about 80 hours less in FY00 than in FY 99.

As for FY00, as noted above, the petitioner attended summer school in 1999 a total of 120 hours. As of September 1, 1999, as found above, the petitioner has been attending a WCMH employment support program for five hours a day. However, this program is year round, and the evidence shows that this program will provide the petitioner with 1,235 hours of supervision on a yearly basis (counting the reimbursement to the petitioner for the respite care she purchased in July and August 1999). In addition to this, as of October 1, 1999, the petitioner began receiving two hours a day of school-funded services that begin immediately after her job support program and end at about 2:30 p.m. These latter services are only available on school days, and it appears that they will provide the petitioner with a total of 320 hours of additional supervision over the course of this school year. Thus the combined hours of supervision from these ongoing programs will total 1,575 hours for the period July 1, 1999 through June 30, 2000. When added to her summer 1999 school attendance this is a total of 1,695 hours of supervision in FY00.

This is an increase of 225 hours of daytime supervision

over what the petitioner had the year before. Even subtracting the 80 hour "reduction" in the Medicaid personal care services that were provided to her in FY00 compared to FY99, and not taking into account that it appears that the petitioner can now be (and is being) left alone for short periods of time on a daily basis, the petitioner appears to have considerably more hours of care and supervision available to her this year than she had last year. In light of this it cannot be concluded that the petitioner's graduation from high school created any "new needs" for care and supervision in FY00 over FY99 that would trigger any analysis of the regulations to determine if she qualifies for an increase in respite care.

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